

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310. (This is a GIL).

September 27, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 6, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please be advised that we represent a graphic design/video production company in Illinois. Due to the ever increasing 'hi-tech' nature of the graphic arts/design-film/video production industry, we request an opinion from your department on several pertinent sales tax questions effecting this business.

1. Does the exemption from sales/use tax on the purchase of graphic arts equipment extend to the technologically state of the art equipment currently used in the graphic arts/design industry? Machinery and equipment can include items such as: computer equipment used in graphic arts design, software used for graphic arts design, and video production equipment. Video production equipment can include various machines to design video graphics, and to splice, copy and create video images and films.
2. Another issue that affects the company concerns printing charges. Our client contracts out it's print jobs of brochures, catalogs and similar items to printing shops. My client pays all sales tax due on any print jobs. However, they then bill their customers for the out-of-pocket print charges. Typically these charges are increased by my client due to the additional services rendered by them in connection with the print job. Would the state expect that additional sales taxes be due on the mark up in price on the print jobs, even though the mark up is for additional services rendered in connection with the print job?

Your prompt response is appreciated. If you have any questions or require clarification of these questions, please call me.

Under the Graphic Arts Machinery and Equipment Exemption, machinery and equipment, including repair and replacement parts, used primarily in graphic arts production may be purchased free from Retailers' Occupation Tax. See 35 ILCS 120/2-5(4). Public Act 91-541, effective August 13, 1999, amended Section 2-30 of the Retailers' Occupation Tax Act. Effective August 13, 1999, section 2-30 defines the term "graphic arts production" to mean "printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System published by the U.S. Office of Management and Budget, 1997 edition. Graphic arts production does not include (i) the transfer of images onto paper or other tangible personal property by means of photocopying or (ii) final printed products in electronic or audio form, including the production of software or audio-books."

Prior to the enactment of P.A. 91-541, "graphic arts production" meant printing by one or more of the common processes of printing or graphic arts production services as those processes and services are defined in Major Group 27 of the U.S. Standard Industrial Classification Manual. This definition is applicable to purchases of graphic arts machinery and equipment purchased prior to August 13, 1999.

Pre-production activities such as text creation, graphic design, editing, or storage do not qualify as graphic arts production. Accordingly, machinery, equipment (including computers), or software used primarily for those purposes will not qualify for the exemption. Please note the regulation provides that the use of computers to store data and generate text, maps, graphs or other print-out formats, unless the product is an image carrier to be used to repetitively transfer images by printing, will generally not be considered to be graphic arts production. See 86 Ill. Adm. Code 130.325.

Please find enclosed a copy of 86 Ill. Adm. Code 130.2000 concerning Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers. Photographers, filmmakers, and other servicemen are subject to tax under the Retailers' Occupation Tax and Service Occupation Tax on the photoprocessing component of their total service charge when they sell products of photoprocessing. Such products of photoprocessing include prints, photographic reproductions, and microfilm. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax shall be imposed on 10% of the entire selling price. Please note that the sale of digital photography is not a sale of products of photoprocessing. Please refer, rather, to the following discussion of Service Occupation Tax for the tax treatment of this type of service.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101

regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not

authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301, enclosed. When both primary servicemen and secondary servicemen are registered, primary servicemen may give a Certificate of Resale to registered secondary servicemen for any tangible personal property purchased. Primary servicemen could then collect Service Use Tax from their customers based upon the separately stated selling price of the property or 50% of the bill to the service customers. If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered.

Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.